



MINISTRY OF HEALTH
OFFICE OF THE CABINET SECRETARY

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Ref. No: MOH/LEGAL/055(25)

11th May, 2020

Mr. Michael Sialai, EBS
Clerk of the National Assembly,
Parliament Buildings,
NAIROBI.

PARLIAMENT
OF KENYA
LIBRARY

Head, Table Office
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Committee
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Dear *MW Sialai*

RE: THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) (DAADAB REFUGEE COMPLEX AND KAKUMA REFUGEE CAMP) ORDER, 2020 – L.N. 77/2020.

We make reference to the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Daadab Refugee Complex and Kakuma Refugee Camp) Order, 2020, published on 28th April, 2020.

In line with the requirements of sections 5A and 11 of the Statutory Instruments Act, 2013, please find enclosed herewith copies of the captioned Order together with the accompanying explanatory memorandum, for your necessary action.

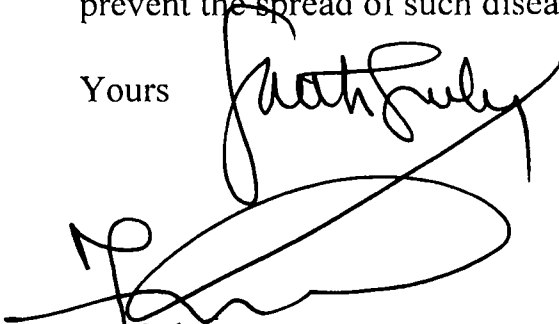
The said Order was made pursuant to section 36 of the Public Health Act and Rule 3 of the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 (L.N. 50/2020) which vests in the Cabinet

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 2 nd JUN 2020	DAY: <i>Wednesday</i>
TABLED BY:	<i>Hon Aden Duale</i> <i>Leader of MP</i>
CLERK-AT THE-TABLE:	<i>[Signature]</i>



Secretary for Health the power to make rules, whenever any part of Kenya appears to be threatened by any formidable epidemic, endemic or infectious disease, to prevent the spread of such disease.

Yours



SEN. MUTAHI KAGWE, EGH
CABINET SECRETARY.

Encl.

Copy to: Principal Secretary

**EXPLANATORY MEMORANDUM TO PUBLIC HEALTH (COVID-19 RESTRICTION
OF MOVEMENT OF PERSONS AND RELATED MEASURES) (DAADAB REFUGEE
COMPLEX AND KAKUMA REFUGEE CAMP) ORDER, 2020**

A. The Purpose of the Order

1. The *Public Health (COVID – 19 Restriction of Movement of Persons and Related Measures (Daadab Refugee Complex and Kakuma Refugee Camp) Order, 2020 (L.N. No. 77 of 2020)* Order has been published in exercise of the powers conferred by Section 36 of the Public Health Act and Rule 3 of the Public Health (Restriction of Movement of Persons and Related Measures) Rules, 2020 (L.N. 50 of 2020).
2. The general purpose of the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 is to prevent the spread of COVID-19. The specific objectives of the Rules include to:
 - (i) to provide for the restriction of movement into and out of COVID-19 infected areas;
 - (ii) to provide a framework for prohibiting and or regulating certain public gatherings;
 - (iii) to define hygiene conditions to be applied in public places during the restriction period; and
 - (iv) to provide for penalties for violations thereof.
3. The effect of the Order is to bring Daadab Refugee Complex and Kakuma Refugee Camp under the provisions of the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020.

B. Legislative Context

4. Section 35 of the of the Public Health Act, Chapter 242 of the Laws of Kenya gives the Minister (Cabinet Secretary) responsible for Health (hereinafter, the Cabinet Secretary) the power to declare, by order, a disease a formidable epidemic disease. By Legal Notice No. 37 dated 27th March 2020, the Cabinet

Secretary declared COVID-19 a formidable epidemic disease. Section 36 of the said Act gives the power to make rules to prevent the spread of a formidable epidemic, endemic or infectious disease. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 were made in this context.

5. Rule 3 of these Rules provides that “*the Cabinet Secretary may, by order, declare these Rules to be in force within an area specified in the order and such area shall be deemed to be an infected area.*”

C. Policy Background

6. The World Health organization declared COVID-19 a public health emergency on 30th January 2020. Since then, the disease continues to spread rapidly, across boundaries. The disease spreads mainly through close contact with infected persons. On 13th March 2020, Kenya confirmed its first case of COVID-19. As at 28th April 2020, there were a total of three hundred and seventy-four (374) confirmed cases of COVID-19 in Kenya, with fourteen (14) deaths and one hundred and twenty-four (124) recoveries.
7. Kenyan is the second biggest refugee-hosting country in Africa after Ethiopia. According to the UNHCR, Daadab Refugee Complex a population of 217, 511 registered refugees and asylum seekers as at the end of March, 2020 while Kakuma camp and Kalobeyei Integrated Settlement had a population of 196,050 registered refugees and asylum-seekers at the end of the same period. If early measures are not taken, there is a possibility that because of the densely populated nature of these areas, COVID-19 could spread quickly among the population.
8. The World Health Organization has provided guidelines on measures that need to be taken to prevent and control the spread of COVID-19. Some of these measures had been or are being implemented in several jurisdictions that have been afflicted by COVID-19. These measures include maintaining social distance; washing hands with soap and water; observing respiratory hygiene and the safe management of dead bodies in the context of COVID-19.
9. The provisions of the Rules which the Order invokes, seek to give effect to the foregoing prevention and control measures that have been recommended by the World Health Organization and or implemented in other jurisdictions faced with

the COVID-19 pandemic, in order to prevent and control the spread of COVID-19.

D. Public Consultations

10. In view of the emergency circumstances occasioned by the rapid spread of COVID-19, and the need to prevent and control the spread of the same, public consultations were not feasible prior to the publication of the Order. It would be appreciated that the measures that the Order seeks to implement are reflective of the necessary executive action that, as a matter of necessity, has to be taken urgently, to prevent and contain the further spread of COVID-19.
11. It would also be appreciated that the objectives of the Order would have been undermined if the Orders were to be subjected to public participation prior to their publication. The purpose of the Order as read with the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 is to restrict movement into and out of Daadab Refugee Complex and Kakuma Refugee Camp, these being the identified infected areas. Disclosing the Order prior to publication, especially through public participation, would only have led to panic reactions and pre-emptive mass movements, with the consequence that the Order would serve no meaningful purpose.
12. While there is reasonable probability that Daadab Refugee Complex and Kakuma Refugee Camp certainly have infected persons, not all of them have been identified, tested and isolated, partly due to limitations of contact tracing, and the time required to undertake the said contact tracing. Consequently, without the restrictions imposed by the present Order, interactions with such persons would enable community transmission across the camps and outside, thereby jeopardizing efforts at containing the spread of the disease.
13. Indeed, and in any case, it is noteworthy that the general rules, being the *Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 (L.N. 46/2020)* were subjected to public consultations following their publication. The *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020* which the Order invokes, reflect most of the comments and views which, although given in the context of the earlier set of rules, provided the public's general views and suggestions on the legal response measures to contain COVID-19. It is also noteworthy that Rule 12 of the said *Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020*

gives the Cabinet Secretary the power to declare any place to be an infected area and to thereupon regulate and/or prescribe such activities and conduct that may be carried out in the infected area, which is, in essence, the effect of the present rules.

E. Guidance

14. The Ministry of Health, the Office of the Government Spokesman, Turkana County and Garissa County Governments shall sensitize members of the public on the provisions and requirements of the Order and the *Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020*.

F. The Contact Person in the Ministry of Health

The contact person at the Ministry of Health shall be the Cabinet Secretary, Hon. Mutahi Kagwe EGH or the Principal Secretary, Ms. Susan Mochache CBS.

Dated the 11th 2020



Sen. Mutahi Kagwe, EGH
CABINET SECRETARY.

(Legislative Supplement No. 42)

LEGAL NOTICE NO. 77

THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(DAADAB REFUGEE COMPLEX AND KAKUMA REFUGEE
CAMP) ORDER, 2020

IN EXERCISE of the powers conferred by Section 36 of the Public Health Act and Rules 3 and 10 of the Public Health (Restriction of Movement of Persons and Related Measures) Rules 2020, the Cabinet Secretary for Health makes the following Order--

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(DAADAB REFUGEE COMPLEX AND KAKUMA REFUGEE
CAMP) ORDER, 2020

1. This Order may be cited as the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Daadab Refugee Complex and Kakuma Refugee Camp) Order, 2020.

Citation.

2. In this Order, unless the context otherwise requires—

Interpretation.

“Daadab Refugee Complex and Kakuma Refugee Camp” means that area covering Daadab Refugee Complex and Kakuma Refugee Camp.

3. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 shall be in force in Daadab Refugee Complex and Kakuma Refugee Camp for twenty eight (28) days with effect from Wednesday, 29th April, 2020 until Wednesday, 27th May, 2020.

Application

4. Notwithstanding the provisions of this Order, the Order shall not apply to the services, personnel or workers exempted as specified in the Schedule hereto in so far as movement is concerned.

SCHEDULE

- (1) Medical professionals and health workers.
- (2) National security, and officers under the National Administration and Co-ordination of National Government (NGAO).
- (3) Public health and sanitation officers in the County Governments.
- (4) Licensed pharmaceutical companies, pharmacies and drug stores.

- (5) Licensed broadcasters and media houses.
- (6) Power production and distribution Companies.
- (7) Water service providers.
- (8) Food and farm produce processors, distributors, dealers, wholesalers and transporters.
- (9) Licensed distributors and retailers of petroleum and oil products and lubricants.
- (10) Licensed telecommunications operators and service providers.
- (11) Licensed banks, financial institutions and payment service providers.
- (12) Fire brigade and emergency response services.
- (13) Licensed security firms.
- (14) Postal and Courier services.
- (15) Such other personnel as may be permitted, in writing, by the county police commanders in the two counties.

Dated the 28th April, 2020.

MUTAIH KAGWE,
Cabinet Secretary for Health.